



Development Services
Planning Division
305 Chestnut Street
PO Box 1810
Wilmington, NC 28402-1810

910 254-0900
910 341-3264 fax
wilmingtonnc.gov
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Application
SIDEWALK CAFÉ

APPROVED BY: _____ **PERMIT NO.:** _____ **DATE:** _____

NOTE:

* Operating hours-no earlier than 7:00 a.m. or later than 11:00 p.m., Sunday-Thursday;
12:00 midnight Friday and Saturdays.

* Must be renewed annually.

Please type or print

1.) **RESTAURANT NAME:** _____

ADDRESS: _____

TELEPHONE NUMBER: _____

2.) **NAME OF OPERATOR:** _____

ADDRESS: _____

TELEPHONE NUMBER: _____

3.) **FOOD, BEVERAGES, AND/OR FOOD PRODUCTS TO BE SOLD**
(ATTACH MENU IF AVAILABLE)

4.) **HOURS OF OPERATION OF RESTAURANT:**

5.) **HOURS OF OPERATION OF CAFÉ:**

6.) **Attach a drawing or site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk café, the section for pedestrian use (this area must be at least four feet from any obstruction), and the proposed placement of tables, chairs, and other furnishings on the sidewalk or pedestrian way.**

- 7.) How and/or where will the sidewalk café furnishings be stored when not in operation?
- 8.) Attach evidence of insurance or other form of security. Commercial general liability insurance or other form of security against general liability must be maintained on the operation of the sidewalk café. Coverage may be under the policies or plans applicable to the establishment generally. The limits of such coverage shall not be less than \$ 1,000,000, combined single limits include contractual liability insurance or security extending to any obligation arising from the indemnity agreement in connection with this application.
- 9.) Sign and return indemnity agreement.
- 10.) Attach a copy of all permits and licenses issued by the State and/or the City of Wilmington, including health and ABC permits and business licenses, necessary for the operation of the restaurant business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the City for exterior alterations or improvements to the restaurant.
- 11.) Attach a sworn statement describing any violation by the restaurant operator of any laws, regulations, ordinances relating to the possession, sale consumption, or transportation of intoxicating beverages or controlled substances during the five (5) years immediately preceding the date of the permit application. If no such violations have occurred; please provide sworn statement to that effect.

**AGREEMENT TO RELEASE AND INDEMNIFY CITY:
OPERATION OF SIDEWALK CAFE AT**

(Name and Address of Establishment)

In consideration of the sum of \$1.00 and for other good and valuable considerations made by the City of Wilmington, receipt of which is hereby acknowledged by

_____ (hereinafter referred to as "Applicant"), and in consideration of the issuance of the permit herein applied for, Applicant hereby agrees as follows:

To the fullest extent permitted by law, the Applicant shall release, indemnify, keep and save harmless the City, its agents, officials, and employees from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials, or employees of the City or third persons, and to all property proximately caused by, incident to, resulting from, arising out of or occurring in connection with the Applicant's use or occupancy of the City's sidewalks or pedestrian ways as may be permitted pursuant to this application (or by any person acting for the Applicant or for whom the Applicant is alleged to be in any way responsible), whether such claim is based in whole or in part on contract, tort (including alleged active or passive negligence or participation in the wrong) or upon an alleged breach of any duty or obligation on the part of the City, its agents, officials or employees.

The provisions of this agreement shall include any claims for equitable relief or for damages (compensatory or punitive) against the City, its agents, officials, and employees, including alleged injury to the business of any claimant, and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the City, its agents, officials and employees, in connection with

c. 4-109. Sidewalk cafes.

(a) *Permit generally.* The city manager or his designee may issue permits for the serving of food and beverages on the city sidewalks and pedestrian ways in the area of the city known as the Central Business District, classified as the CBD Zone, and the Main Street Mixed Use District, classified as the MSMU Zone, pursuant to Chapter 18 of the City Code.

(b) *Definitions.* The following definitions shall apply in this section:

(1) *Restaurant.* An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises, including businesses that are referred to as restaurants, cafeterias, cafes, lunch stands, grills, snack bars, fast food businesses, and other establishments, such as drug stores, which have a lunch counter or other section where food is sold to be eaten on the premises. This definition does not include food vendors covered under section 4-107 of the City Code.

(2) *Sidewalk.* That portion of a public street between the curb line, or the lateral lines of the roadway if there is no curb and the adjacent property line that is intended for the use of pedestrians.

(3) *Pedestrian way.* An improved walk or passageway intended for use by pedestrians, but not adjacent to any city street.

(4) *Restaurant operator.* The person, firm, or corporation operating a restaurant and associated sidewalk cafe. As used in this section, this definition includes the owner, and manager if different from the owner, of the restaurant and associated sidewalk cafe.

(c) *Application.* Any restaurant desiring to operate a sidewalk cafe shall prepare and file an application with the city manager or his designee which shall contain the following information.

(1) The name, address, and telephone number of the restaurant desiring to operate a sidewalk cafe.

(2) The name, address, and telephone number of the restaurant operator.

(3) The type of food, beverage, or food product to be sold and served at the sidewalk cafe.

(4) The hours of operation of the restaurant and the proposed hours of operation of the sidewalk cafe.

(5) A drawing or site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk cafe, and the section to be kept clear for pedestrian use, and depicting the proposed placement of tables, chairs, barricades, and other furnishings on the sidewalk or pedestrian way.

(6) Evidence of adequate insurance or other forms of security to hold the city and its taxpayers harmless from claims arising out of the operation of the sidewalk cafe, as determined by the city manager in consultation with the Wilmington/New Hanover Insurance Advisory Committee.

(7) An indemnity statement, approved by the city attorney, whereby the restaurant operator agrees to indemnify and hold harmless the city and its officers, agents, and employees from any claim arising from the operation of the sidewalk cafe.

(8) A copy of all permits and licenses issued by the state or the city, including health and ABC permits and business licenses, necessary for the operation of the restaurant business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the city for exterior alterations or improvements to the restaurant.

(9) A sworn statement describing any violation by the restaurant operator of any laws, regulations, or ordinances relating to the possession, sale, consumption, or transportation of intoxicating beverages or controlled substances during the five (5) years immediately preceding the date of the permit application.

(10) Such additional information as may be requested by the city manager or his designee to determine compliance with this section.

(11) A fee as provided in the City of Wilmington Fee Schedule to cover the cost of processing and investigating the application and issuing the permit.

(d) *Issuance of permit.* No permit for the operation of a sidewalk cafe may be issued unless the application is complete and unless the following requirements are met:

(1) The sidewalk cafe must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, restroom facilities, and other customer convenience facilities as the restaurant. The sidewalk cafe must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business.

(2) The operation of the sidewalk cafe must be clearly incidental to the associated restaurant business. The seating capacity of the sidewalk cafe may not be more than fifty (50) percent of the interior seating capacity of the associated restaurant.

(3) Tables, chairs, and other furnishings, as shown in the drawing submitted with the plan, may be placed at the building or at the curb, but must be located in such a manner that a minimum of four (4) feet of unobstructed width (as measured from the street-side edge of the sidewalk or building front) remains on the sidewalk or pedestrian way. Obstructions include, but are not limited to, trees, poles, lighting, signs, hydrants, trash receptacles, and tree grates. Provided, however, a tree grate shall not be considered an obstruction if:

a. The owner of the sidewalk cafe pays the full cost of installing a tree grate approved as complying with the Americans With Disabilities Act as an acceptable surface for pedestrians and wheelchairs; and

b. The owner maintains the grate so that it provides a smooth and level surface for passage.

(4) The restaurant seeking to operate the sidewalk cafe must front on and open onto the sidewalk or pedestrian way proposed for the sidewalk cafe. The placement of tables, chairs, and other furnishings may not extend beyond the sidewalk or pedestrian-way frontage of the associated restaurant.

(5) Tables, chairs, and other furnishings utilized for sidewalk cafes shall be of a type that can be easily removed from the public right-of-way. Tables, chairs, and other furnishings used in the operation of the sidewalk cafe must be removed within twenty-four (24) hours of notice from the city. If such items are not removed upon twenty-four (24) hours notice, the city shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. These items shall not be permanently affixed to the sidewalk and must remain within the designated boundaries as delineated by city-installed sidewalk markers. The city shall also have the right to remove such items immediately in emergency situations. The city shall not be responsible for damage to public sidewalk cafe furnishings under any circumstances.

(6) Except as elsewhere permitted, the operation or furnishing of the sidewalk cafe shall not involve any permanent alteration to or encroachment upon any street, sidewalk, or pedestrian way or to the exterior of the associated restaurant. The owner of the sidewalk cafe shall be responsible for repairing any incidental damage to public sidewalks resulting from the operation of the sidewalk cafe.

(7) No person shall operate a sidewalk cafe later than 11:00 p.m. Sunday through Thursday and 12:00 midnight on Fridays and Saturdays. After such hours, the area of the sidewalk cafe shall be open to the public and shall not be considered part of the premises of the restaurant. Any person consuming alcoholic beverages in a sidewalk cafe after such hours shall be subject to the provisions of section 6-12 of the City Code.

(8) The approved site plan for the sidewalk cafe must be posted conspicuously within the place of business at all times.

(e) *Alcoholic beverages.* Notwithstanding the provisions of section 6-12 of the City Code, alcoholic beverages may be served at sidewalk cafes provided the following requirements are met:

(1) The sidewalk cafe shall be part of a standard restaurant as that term is defined in section 19-6 of the City Code, and shall otherwise be authorized, permitted, or licensed under the state law and City Code to serve and sell alcoholic beverages for on-premises consumption.

(2) The portion of the sidewalk cafe where alcohol is or may be served shall be enclosed by clearly visible barricades and shall have not more than two (2) points of ingress and egress.

(3) The sidewalk cafe must be included as part of the premises for which an ABC permit is issued pursuant to G.S. 18B-1001 for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages.

(4) Signs shall be posted, visible at all exit points from the sidewalk cafe, that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises.

(5) The restaurant operator shall not have violated any law, regulation, or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the three (3) years preceding the commencement of the sale of alcoholic beverages at the sidewalk cafe.

(f) *Denial.* A permit may be denied if it is found that the granting of the permit would not be in the public interest. Any applicant denied a permit to operate a sidewalk cafe shall receive a written statement, outlining the grounds on which the denial is based. The applicant may appeal the denial of the permit to the city council within fifteen (15) working days after the date of the written denial and the city council may take such corrective action as it shall find necessary. The findings and determination of the city council shall be final.

(g) *Permit revocation.* The city manager may revoke a permit issued pursuant to this section, if he finds that the restaurant operator has:

(1) Deliberately misrepresented or provided false information in the permit application.

(2) Violated any provision of Chapter 4, Article III of the Wilmington City Code or county health department regulations.

(3) Violated any law, regulation, or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances.

(4) Operated the sidewalk cafe in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare; specifically including failure to keep the sidewalk cafe area clean and free of refuse.

(5) Failed to maintain any health, business or other permit or license required by law for the operation of a restaurant business.

Before the revocation of a permit, the city manager shall notify the permit holder of his intent to revoke the permit and the reasons therefor and shall afford the permit holder a reasonable opportunity to appear and be heard on a question of such revocation. After the hearing, the city manager shall notify the permit holder in writing of this decision and the reasons therefor. A decision of the city manager to revoke a permit may be appealed to the city council in accordance with the provisions of subsection (f).

(h) *Reservation of rights.* The city reserves the right to require any sidewalk cafe established pursuant to this article to cease part or all of its operation in order to allow for construction, maintenance, or repair of any street, sidewalk, utility, or public building by the city, its agents or employees, or by any other governmental entity or public utility; and to allow for use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature as permitted by the city.

(i) *Term, transfer, renewal, etc.* Permits issued in accordance with the provisions of this section shall:

(1) Be issued for the period beginning September 1 and expiring August 31 of each year;

(2) Be in addition to the annual privilege license required pursuant to article II of this chapter and the fee schedule;

(3) Not be transferable or assignable; and

(4) Be subject to site inspection prior to initial permit issuance as well as annual permit renewal.

Ord. of 9-18-90, § 1; Ord. of 1-20-98, § 1; Ord. of 9-5-00, § 1; Ord. No. O-2006-117, §§ 1--3, 12-12-06)

Ordinance



City Council
City of Wilmington
North Carolina

#15B
0-2006-118

Introduced By: Sterling B. Cheatham, City Manager

Date: 12/12/2006

**Ordinance Amending Chapter VII of the
City of Wilmington Fee Schedule for Sidewalk Cafés
(OBG-5a-1006)**

LEGISLATIVE INTENT/PURPOSE:

WHEREAS, the City of Wilmington has adopted a Fee Schedule establishing privilege license taxes and other fees including miscellaneous fees and permits for zoning and other planning fees.

WHEREAS, the City has determined that it is appropriate to modify the fee for sidewalk cafes.

THEREFORE, BE IT ORDAINED:

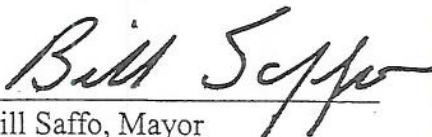
SECTION 1: Chapter VII, Section 11, Sidewalk Café Permits, of the City of Wilmington Fee Schedule is hereby amended by modifying the fee for Sidewalk Cafe Permits as follows:

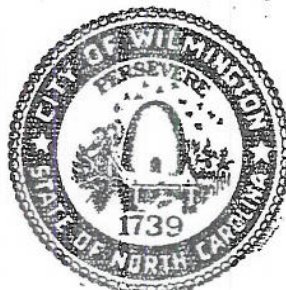
FACILITY/ACTIVITY	INITIAL	RENEWAL
Sidewalk Café Permits	\$250.00 plus 2.00 per square foot	\$150.00 plus 1.00 per square foot

SECTION 2: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3: If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 4: This ordinance shall be effective immediately upon its adoption.


Bill Saffo, Mayor



Adopted at a regular meeting
on December 12, 2006.

ATTEST:


City Clerk

CERTIFIED TO BE A TRUE COPY
CITY CLERK


156-14

APPROVED AS TO FORM:

[Signature]
City Attorney

FACILITY CAPACITY		INITIAL		RENEWAL	
100	100	100	100	100	100
100	100	100	100	100	100

156-15



156-15

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

SWORN STATEMENT

I, _____, being first duly sworn, did depose and say that:
(Affiant)

I am the operator of the restaurant _____
(Restaurant Name)

located at _____, Wilmington, NC and owned by
(Address)

_____, whose address is _____
(Name) (Address)

I have not violated any laws, regulations, and/or ordinances relating to the possession, sale, consumption or transportation of intoxicating beverages or controlled substances during the five years immediately preceding the date of my permit application, i.e., _____, and I have not been convicted of any such violations.
(Date)

Affiant

Sworn to and subscribed
Before me this _____ day
of _____, 20__.

Notary Public

(SEAL)

My Commission Expires:
